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DA 98-2188

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In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Cross Plains, Texas)

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)
)
) MM Docket No. 98-198
) RM-9304
)
)

Adopted: October 21, 1998

Released: October 30, 1998

Comment Date: December 21, 1998

Reply Date: January 5, 1999

By the Chief, Allocations Branch

1. Before the Commission for consideration is a petition for rule making filed by Alalatex Broadcasters ("Alalatex") proposing the allotment of Channel 245C3 at Cross Plains, Texas. Alalatex indicated that it would file an application for Channel 245C3 at Cross Plains if the channel is allotted to the community.
2. In support of its request, Alalatex states that the allotment of Channel 245C3 would provide the community of Cross Plains with its first local service. Alalatex believes that Cross Plains is a community for allotment purposes since it has the usual indicia of a community. Further, Cross Plains is incorporated and it is listed in the 1990 Census with a population of 1,063 people.¹
3. We believe the proposal warrants consideration because the proposed allotment would provide a first local broadcast service to Cross Plains. A staff engineering analysis indicates that Channel 245C3 can be allotted to Cross Plains consistent with the minimum distance separation requirements of the Commission's Rules without a site restriction.²

¹ The 1998 edition of the Rand McNally Commercial Atlas indicates that Cross Plains has a post office and separate zip code (76443).

² The coordinates for Channel 245C3 at Cross Plains are 32-07-42 and 99-11-18. Although Channel 245C3 at Cross Plains appears to be short spaced to Station KVMX, Channel 244A, Eastland, Texas, Channel 236A has been substituted for Channel 244A at Eastland. See MM Docket No. 96-10, 12 FCC Rcd 4099 (1997)

4. In view of the fact that the proposed allotment could provide a first local service to Cross Plains, the Commission believes it would serve the public interest to solicit comments on the proposal to allot Channel 245C3 to Cross Plains, Texas. Therefore, we will seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Cross Plains, as follows:

Community	Channel No.	
	Present	Proposed
Cross Plains, Texas	-----	245C3

5. IT IS FURTHER ORDERED, That the Commission's Office of Public Affairs, Reference Division, shall send by Certified Mail, Return Receipt Requested, a copy of this *Order* to the following:

Cowboys Broadcasting, LLC.
Station KVMX
1110 S. Santa Fe Trail
Duncanville, Texas 75137

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **December 21, 1998**, and reply comments on or before **January 5, 1999**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D. C., 20554. Additionally, a copy of such comments should be served on the petitioner, as follows:

Alalalex Broadcasters
Jean Hill, Partner
6101 Bayou Road
Mobile, Alabama 36605

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the

and 12 FCC Rcd 12056 (1997). Further, Cowboy Broadcasting, LLC, licensee of Station KVMX, Eastland, has requested the substitution of Channel 236C3 for Channel 236A and reallocation of Channel 236C3 from Eastland to Baird, Texas. See 12 FCC Rcd 20392 (1997).

Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204.(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal communications Commission, Washington, D, C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D. C.